



Flagler County Sheriff's Office


James L. Manfre
SHERIFF

Accountability • Integrity • Respect

MEMORANDUM

March 5, 2013

TO: Sheriff Jim Manfre

FROM: Undersheriff Rick Staly 

SUBJECT: Sr. Cmdr. David O'Brien Performance and Abilities

On 2/15/2013 Sr. Cmdr. David O'Brien was counseled on his performance. Since that time he has cosmetically improved the appearance of his performance. He has adjusted his work hours and has made timely notifications and did respond to a homicide scene. However his administrative abilities continue to fall well below expectations of an executive level staff member. For example:

On 1/22/13 Sr. Cmdr. O'Brien was tasked with creating an off-duty employment policy in conjunction with HR and Business Services. He briefed me once that he was having Lt. Catoggio handle the policy. On 2/25/13 he provided me a draft policy. The policy was not properly formatted but more importantly the policy was poorly written with much duplication, grammatical errors and in some cases paragraphs made no sense. After spending 1.5 hours trying to fix the policy I gave up and emailed Cmdr. O'Brien that I was disappointed in the quality of the policy, etc. He responded that he would fix it. It is my belief that Cmdr. O'Brien did not become properly engaged in drafting the policy and he did not involve HR and business services as directed.

In early January 2013 all Divisions were asked to complete an analysis of their division with a due date of 2/5/13. The divisions asked for an extension because of the workload which was approved with all agreeing to a 3/1/13 due date. As of this date Cmdr. O'Brien has failed to submit the required division assessment.

On 2/5/13 Cmdr. O'Brien was tasked with chairing a committee on Domestic Violence response to include community education, initial response and follow-up investigations. He was tasked with creating an all-inclusive and comprehensive plan and involving Cmdr. Bisland and the community outreach and training sections. The plan is due 3/5/13. As of this date he has not had any meetings with other sections but did ask the training section to look into domestic violence training. When I asked him about the status he gave me a training inquiry update and did not understand it was to be a comprehensive initiative. This assignment was done during a staff meeting after an in-depth discussion on domestic violence. I inquired of the other members of the staff meeting and all understood the assignment as presented to Cmdr. O'Brien. It appears Cmdr. O'Brien is the only one that did not understand and/or follow-up as directed.

Cmdr. O'Brien was tasked with reviewing and revising policies on vehicle operation and vehicle apprehension during the staff meeting of 2/19 and was to provide me a draft by 2/22. While this was a short time period Sheriff Manfre had made it clear the critical importance of these policy revisions because of a recent vehicle incident. I received the vehicle apprehension policy on 2/24 but did not receive the vehicle operation policy until after my inquiry on 2/25. At that time he indicated it was almost done. I received this policy on the afternoon of 2/26. Upon further inquiry I was advised by Dir. Crouse that he had spent over



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Six hours assisting Cmdr. O'Brien and that the vehicle apprehension policy was done by Thursday 2/21 and that Cmdr. O'Brien felt that the existing vehicle operation policy was sufficient. After my discussion with Cmdr. O'Brien on 2/25 he had renewed understanding that the existing vehicle operation policy was in need of revision.

Cmdr. O'Brien was tasked with creating a policy on vehicle issuance and replacement and revisions to existing policy 41.3. This was needed so that new vehicles that have been sitting at fleet can be assigned in a fair and equitable manner. After weeks of waiting for this policy I received a draft from Cmdr. O'Brien on 2/26. Upon my review of the draft it was obvious that Cmdr. O'Brien had copied another agency's policy but had not made the effort to edit the policy to fit FCSO. While I am a firm believer of not re-inventing the wheel members of the agency at the executive staff level should take the initiative to present a policy that is virtually ready to go. This was not done.

Upon review of the Vehicle Apprehension policy there are references to two other policies. Cmdr. O'Brien should have taken the initiative to review these policies since they are referenced in the vehicle apprehension policy. He did not until after I requested he review and provide them to me. While he did meet the deadline for the review of these additional policies the additional policies contain references to two additional policies 8.1.8 and 5.1.2 which again were not reviewed.

On 3/4/13 Sr. Cmdr. O'Brien was advised that a high risk search warrant would be executed the next day. Mid-morning 3/5/13 Sr. Cmdr. O'Brien advised me that SWAT would be executing a search warrant. At 1330 hours I found a VM from O'Brien asking me to call him. At 1430 hours SWAT held a briefing at the Ops center for the search warrant. Sheriff Manfre and I attended. Cmdr. O'Brien was not in attendance despite the fact that SWAT is under his command and this was a high risk search warrant because of the anticipation of automatic rifles and other firearms being present. I returned Sr. Cmdr. O'Brien's VM and he stated that he was just leaving a meeting at the courthouse and asked if it was okay to "cut-out early." I asked him if all his work was done and he said yes but we would probably be working on some policies from home. I later arrived on the scene of the executed search warrant. Sr. Cmdr. O'Brien had not been present. Late this afternoon he called me to update the search warrant. I asked him if he was sick or okay and Sr. Cmdr. O'Brien stated he did not sleep well the previous night and was just tired.

In summary, while Sr. Cmdr. O'Brien has shown some improvement in some areas such as notifications and response he continues to miss deadlines and does not seem to comprehend the urgency of assignments and agency needs and expectations. The quality of his work product is substandard and unacceptable and does not meet expectations of individuals at the executive staff level.

I have directly supervised Cmdr. O'Brien for almost sixty days and it has become obvious that he is either incapable or unwilling to perform at the executive level. As such, I recommend his appointed position as Sr. Commander is revoked effective immediately. I further recommend that the Sr. Commander position be eliminated and replaced with a commander position.



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MEMORANDUM

February 15, 2012

To: Sr. Cmdr. David O'Brien

FROM: Undersheriff Rick Staly 

SUBJECT: Performance Review

The purpose of this memorandum is to discuss your performance which to date has failed to meet the expectations of a member of the Executive Staff.

Transition Performance – Pre January 8, 2013

During the transition period from November 8, 2012 thru January 7, 2013 your overall performance raised significant concerns with the transition team, me and then Sheriff-elect Manfre. For example:

- On or about November 30, 2012 you along with other members of FCSO were requested to provide a transition document by December 10, 2012 along with three copies of each document. None of the requested documents were received by the due date and in most cases the requested number of copies was not received.
- On December 10, 2012 you were provided an additional request for documents to include three copies of each with a due date of December 17, 2012. Again the due date was missed and inquiry by me since then indicated that in many cases the requests for documents were requested to subordinate employees only after my third request dated December 17, 2012.
- On December 17, 2012 a third memorandum was provided to you indicating that many previous transition requests had not been received or were not completed in its entirety. It was requested that documents be received by December 19, 2012.

During the transition period your response to requests, emails and phone calls were less than timely. In multiple cases requests appeared to be ignored and/or emails or phone calls were not acknowledge or returned for days. This was especially prevalent during after normal work hours and weekends. This caused a burden on the transition team. It was also observed how filthy your assigned vehicle was with trash, papers and general dirt strewn throughout your assigned car.

As the Chief Deputy and the point-of-contact for the then Sheriff-elect Manfre and the transition team it was your responsibility to ensure your subordinates completed assignments accurately, timely and completely. In fact, I had to track you down to obtain requested documents and because many were completed late then had to be mailed overnight to my location. In fact, there was an additional delay because you missed the overnight pick-up and an agency holiday.

In conclusion, your performance and lack of engagement raised serious concerns among the transition team and then Sheriff-elect Manfre. However, since we were not "in-office" you were given the benefit-of-the-doubt as it was not known if the out-going Sheriff was counter ordering and denying the transition requests.

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Despite these concerns Sheriff Manfre decided to give you an opportunity to be part of the Executive Staff team.

NOTE: Since January 8, 2013 I have learned that many of the transition requests were not provided to subordinate employees by then Chief Deputy O'Brien until the request was virtually due.

Performance since January 8, 2013

Overall, your performance and engagement has continued with the pattern and performance we saw during the transition and is not acceptable as a member of the Executive Staff, especially an executive staff member with the responsibility of the Agency's largest Division. For example:

- There appears to be a lack of engagement and proactiveness on your part in leading your Division. Operational issues are not addressed until they are brought to your attention by me instead of you taking a proactive approach. For example:
 - Reviews of the Daily Shift Briefing logs do not seem to trigger any concern or proactiveness by you on how your subordinate staff is handling calls until it is brought to your attention by me. Recent examples include transporting and dropping off individuals at the county line to resolve a service call; failure to write reports when there clearly should have been more CAD notes done; business windows smashed out and not discovered by the patrol units.

NOTE: While you may try to justify the above actions by your subordinates as "that's the way we've always done it" that is not an acceptable answer and as a graduate of the FBI National Academy and with over 25-years of law enforcement experience you should know and be aware of modern and accepted best practices and take proactive action by recognizing deficiencies and potential liability issues without having to be directed to do so.

- Despite being provided and signing an *Appointment to Executive Staff Agreement* and *Command Staff Relationship Expectations* on January 10, 2013 and being provided your Job Description on January 7, 2013 all of which clearly outline the expectations of your performance and position you still appear to think your position is generally a Monday thru Friday 9-5 position. For example:
 - During SWAT training on February 6, 2013 you asked the Sheriff if "you had to stay or could you go." It was 5:30pm and the Sheriff, I and your entire SWAT team were staying to the conclusion of the training exercise. Wanting to leave early does not build respect within your command or show to your subordinates that you are genuinely committed. Asking the Sheriff if it was okay to leave not only violated the chain-of-command but reinforced your lack of dedication and commitment as an Executive Staff member.
 - On February 1, 2013 you attended a meeting with the Sheriff, me, Cmdr. Bisland and Lt. Cole concerning the upcoming school board meeting on the SRO program. The Sheriff directed you to attend the School Board meeting on February 5, 2013 at 1800 hours. You failed to attend. I asked you about this and initially you said that you were busy handling the Sgt. Larry Jones issue at the Palm Coast Precinct implying that you could not attend the school board meeting because you were handling a personnel issue.

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Later in the same conversation you stated that you "thought the Sheriff really wanted Lt. Cole to be there." I reminded you that the Sheriff wanted you present because you had met with the school representatives previously and developed the color code system that was going to be part of the school board discussion on school safety and SRD program.

NOTE: My later inquiry determined that you did speak with Sgt. Jones at the Palm Coast Precinct on 2/5/13 but that you left the precinct prior to 1800 hours and clearly could have attended the school board meeting as ordered to by the Sheriff. As noted above your initial response to my question on why you missed the school board meeting borders on a truthfulness issue.

- Most days you arrive to the office between 0900-0930 and leave anywhere between 1600-1700. Clearly another indication of your lack of engagement and dedication that is required of an Executive Staff member and a verification of the perception that you are generally a 9-5 employee.

NOTE: While it is noted that you do occasionally answer an email after normal work hours and on weekends as an Executive Staff member that is expected behavior.

- There is a failure on your part to take responsibility for the actions of your subordinates, timely notifications, timely task completion and to be engaged and take responsibility for the operations of your division. For example:
 - Timely communications and notifications continue to be an issue in your division and by you. For example, Cpl. Walters was injured while on-duty on 2/8/13 @ 1515 hours and according to the CAD "Detail for Service Report" you were notified of the injury on 2/8/13 @ 1812 hours. You did not notify me until 2/9/13 @ 0814 hours.
 - On 2/1/13 we discussed the FDOT class you attended and you told me there was a lot of grant money available and that you were doing research on available grants. I asked you to discuss the available grants with me during on regular meeting on 2/4/13 so that we could decide what grants we would pursue. As of 2/15/13 you have not done this.
 - On 2/4/13 I asked you to review various commendations that were submitted during 2012 and to select 2-3 that you felt were the best for discussion at the executive staff meeting on 2/5/13. As of 2/15 you have not done so and the deadline for submission has expired. Recognizing employees is an expected function of your position and reflects a commitment to your subordinates that work hard to support your team.
 - On 2/4/13 you discussed a Safe Neighborhood Unit operational plan for a sting operation that was to occur on 2/6/13. During the conversation you initially indicated the plan was ready to go and you were just letting me know of the operation in advance, which is expected. When I voiced concerns about the plan you stated "well this is what "they gave me" trying to deflect responsibility for the plan and then offered an operational concern yourself. This is a prime example of not taking responsibility. If you had concerns with the plan those concerns should have been discussed with your subordinates prior to accepting the plan and briefing me as it was a completed plan.
 - You were directed to create a STEP plan. While you gave a verbal update on traffic crash causations as of 2/15 (more than 3 weeks later) there is still no STEP plan.

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- Your and Cmdr. Carmen were asked to create a staffing schedule for the Palm Coast Precinct and you were given very specific guidelines. The first schedule submitted by Cmdr. Carmen direct without your review was totally unacceptable and you said you would handle it. The second schedule which you approved and implemented required Sgt. Jones to work every weekend and he had a quick shift turn-around which should have been found to not be acceptable by you but was not. Proper treatment of employee schedules is paramount to proper and effective leadership.
- On 2/4/13 I requested the name of a line deputy to be a part of the 10-code committee. As of 2/15/13 I still have not received a name. This is not a time consuming task and should have been easily accomplished if you are committed and understand the urgency in accomplishing assigned tasks and requests.
- Your office has been a mess and is a direct reflection on you and this administration. I have politely encouraged you to clean-up your office on two occasions over a 2 ½ week period. Each time you told me that you would be doing it the upcoming weekend. When it was not done I inquired and you indicated your "wife was sick" or you "didn't have time." On 2/6/13 I directed that your office is to be clean and presentable looking by Friday 2/8/13 or "the Sheriff will have Pat come do it." You laughed and I said the Sheriff is serious. While it was ultimately cleaned it should have been done so without having to be encouraged for weeks.
- The most egregious notification and response failure on your part is the recent stand-off that occurred on 2/7/13 with a fugitive in Bunnell. This stand-off lasting almost 4-hours and resulted in agency members discharging four rounds of less lethal rubber bullets striking the suspect to take him in to custody.

As the Senior Commander in the Agency, the commander of the Neighborhood Services Division and having the overall responsibility of SWAT and an incident involving a protracted stand-off involving up to a dozen deputies you should have responded to the scene. In addition, you should have contacted me that night while the incident was on-going. Instead, as of the date I am writing this memorandum you have yet to acknowledge this incident even occurred or discuss it with me despite it being in the paper. The only reason I am aware of this incident is because others did their job, i.e., Lt. Bovino wrote a Watch Commander's report that I received and the Communications Center sent a text page when the incident started and included it in their Daily Shift Briefing the next morning.

Proper notifications have been the subject of multiple discussions and emails and you were involved in the re-write of the Communications Center staff notification protocols. It is solely your responsibility to ensure your Watch Commanders notify you of on-going critical incidents and it is your responsibility as the Neighborhood Services Division and Senior Commander in the agency to respond to the scene of critical incidents and notify me of on-going high risk or critical incidents. Sending a text to the on-duty watch commander asking what is going on is not sufficient, especially if there is no immediate reply. Therefore, in this incident the "buck stops at [your] desk."

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- On 2/11 you were given a directive by the Sheriff to revise the tattoo cover policy after obtaining input from affected employees by 2/15. I sent you a task assignment with specific requirements to obtain employee input. On 2/12 you appeared unaware of the task assignment during the staff meeting (although you later accepted by Outlook the task). During this same staff meeting a discussion occurred on how policy should be developed and how to get buy-in from the line level which centered around making them a part of the policy development process. Later that afternoon you asked me my thoughts on the tattoo cover-up issue and I reemphasized the need to get employee input along with my thoughts. Later that day you told me how you were going to revise the policy without input as you "have heard it all before." On 2/13 you again had a discussion with the Sheriff and me about the tattoo issue and what you were going to propose and the Sheriff again told you he wanted input from line employees. On 2/14 you advised the Sheriff and I that you contacted Deputy Lowe who received input from other deputies and that you would be revising the policy with a completely different result than you had previously planned. In summary, you failed to comprehend the expectation of employee involvement in policy development to obtain buy-in and a bottom up approach instead of a top down approach to policy development and leadership. In addition had you just followed the direction previously given all these discussions were not necessary to re-hash the same direction and requirement to obtain input.

Summary

In summary your performance has been unsatisfactory, defacto insubordination and a continuation of the unacceptable behavior that was observed during the transition period. You have demonstrated a lack of leadership and commitment that is unacceptable. Your lack of commitment and unacceptable performance is inconsistent with that expected of a member of the appointed executive staff and in violation of the *Appointment to Executive Staff Agreement*, *Command Staff Relationship Expectations* and the *Senior Commander Job Description*. As the third highest ranking member of the agency you have been given the authority and the responsibility commensurate with your rank. As such you are expected to exercise your assigned responsibility with commitment, dedication and leadership.

You are reminded that as a member of the appointed executive staff you serve at the pleasure of the Sheriff. Failure to immediately improve your performance, commitment to the Sheriff's vision, goals and direction, dramatically improve your commitment to the agency and your division and your continued failure to maintain a high level of acceptable performance in compliance with the above documents and agency policies and directives will result in future personnel action including and up to the revocation of your appointment to the Executive Staff team and continued employment with FCSO.

By signing below you are only acknowledging that you have received this memorandum.



Sr. Cmdr. David O'Brien